Chapter Two

RIGHTS AND DUTIES OF COASTAL AND PORT STATES

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§ 511. Coastal State Authority in Zones of Adjacent Sea

Subject to §§ 512–15, a coastal state may exercise jurisdiction over the following coastal zones:

(a) The territorial sea: a belt of sea that may not exceed 12 nautical miles, measured from a baseline that is either the low-water line along the coast or the seaward limit of the internal waters of the coastal state or, in the case of an archipelagic state, the seaward limit of the archipelagic waters;

(b) The contiguous zone: a belt of sea contiguous to the territorial sea, which may not extend beyond 24 nautical miles from the baseline from which the breadth of the territorial sea is measured;

(c) The continental shelf: the sea-bed and subsoil of the submarine areas that extend beyond the coastal state's territorial sea

(i) throughout the natural prolongation of the state's land territory to the outer edge of the continental margin, subject to certain limitations based on geological and geographical factors; or

(ii) to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, where there is no continental margin off the coast or where

Compare Article 77(3) of the LOS Convention *with* Articles 3, 33, 47, and 57.

e. Internal waters and ports. Internal waters are waters wholly or largely surrounded by a state's land territory, as well as sea waters on the landward side of the baseline of the territorial sea or of the archipelagic waters. 1958 Convention on the Territorial Sea and the Contiguous Zone, Article 5(1); LOS Convention, Articles 8(1) and 50. Under international law, a coastal state's sovereignty over its land territory extends to its internal waters, including bays. See Comment *f*. A state also has complete sovereignty over its seaports, but there are special rules for roadsteads and offshore terminals. 1958 Convention on the Territorial Sea, Article 9; LOS Convention, Articles 12, 60, 218, and 220.

f. Bays. A coastal state may designate a bay as its internal waters if it has prescribed characteristics. It must be a well-marked indentation in the coast, not a mere curvature. Its area must be as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of the indentation. The closing line of a bay is drawn between its natural entrance points; the line may not exceed 24 nautical miles, but a 24-mile line may be drawn within the bay in such manner as to enclose the maximum area of water that is possible with a line of that length. 1958 Convention on the Territorial Sea and the Contiguous Zone, Article 7; LOS Convention, Article 10.

In addition, international law recognizes "historic" bays that have been considered internal waters even though they do not satisfy criteria for a bay. 1958 Convention on the Territorial Sea and the Contiguous Zone, Article 7(6); LOS Convention, Article 10(6).

g. Islands. An island is "a naturally formed area of land, surrounded by water, which is above water at high tide." 1958 Convention on the Territorial Sea and the Contiguous Zone, Article 10(1); LOS Convention, Article 121(1). In this Restatement, the term "coast" includes not only the shore of the mainland but also of islands; all islands are entitled to a territorial sea, a contiguous zone, an exclusive economic zone, and a continental shelf. LOS Convention, Article 121(2). But rocks that cannot sustain human habitation or economic life of their own have only a territorial sea and a contiguous zone, not an exclusive economic zone or a continental shelf. *Id.* Article 121(3). See also *id.* Article 6 with respect to reefs.

h. Baseline from which territorial sea is measured. The normal baseline for measuring the breadth of the territorial sea is

the concept of natural prolongation with a specified distance from the shore. The new definition broadens the area under the jurisdiction of the coastal state by extending it to the entire continental margin (*i.e.*, the continuation of the land mass until it reaches the abyssal plain), subject to some limitations where the margin is unusually large. LOS Convention, Article 76. The new definition also gives the coastal state authority over the sea-bed to a distance of 200 nautical miles even if that sea-bed is not the natural prolongation of the coastal land mass. In that area, the coastal state has jurisdiction over sea-bed resources both under the doctrine of the continental shelf and as one of its rights in the exclusive economic zone. This complex definition for the continental shelf has been accepted implicitly by the United States. See the 1983 Oceans Policy Statement, Introductory Note to this Part.

k. Contiguous zone and other special coastal zones. International law recognizes special rights for a coastal state to take measures to enforce specified laws in a zone contiguous to the territorial sea, extending up to 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. See this section, clause (b), and § 513, Comment *f*. International law has not recognized coastal state assertions of special zones to protect security or environment. As to air defense identification zones asserted by some states, see § 521, Reporters' Note 2.

REPORTERS' NOTES

1. *Authority of coastal state.* Traditional international law accepted coastal state sovereignty only over internal waters, ports, historic bays, and territorial sea, and enforcement authority for the coastal state in a zone contiguous to its territorial sea. The 1958 Convention on the Continental Shelf recognized the exclusive jurisdiction of the coastal state over the sea-bed resources of the continental shelf. The LOS Convention added sovereignty over archipelagic waters, extended the definition of the continental shelf, and gave the coastal state exclusive rights to resources and other limited rights in the exclusive economic zone. The authority of the coastal state in the different zones is subject to navigational and overflight rights of other states and their right to use the sea for other purposes lawful under international law. These rights differ in the different coastal areas. See §§ 512–15.

2. *Internal waters, ports, roadsteads, and offshore terminals.* "Internal waters" include waters of lakes, rivers, and bays that are on the landward side of the baseline of the territorial sea or of archipelagic waters. For rivers, this baseline is a straight line across the mouth of the river between points on the low-tide line of its banks. See 1958 Convention on the Territorial Sea and the Contiguous Zone, Arts. 5 and 13; LOS Convention, Arts. 8–9.

A "port" is "a place where ships are in the habit of coming for the purpose of loading or unloading, embarking or disembarking." The Möwe, [1915] P. 1, 2 Lloyds Prize Cas. 70. According to Article 1 of the 1923 Statute on the International Regime of Maritime Ports, a "maritime port" is a port that is "normally frequented by sea-going vessels and used for foreign trade." 58 L.N.T.S. 285, 301, 2 Hudson, International Legislation 1162 (1931).

For the purpose of delimiting the territorial sea, the outermost permanent harbor works that form an integral part of the harbor system are regarded as forming part of the coast, but offshore installations are not considered permanent harbor works for this purpose. See 1958 Convention on the Territorial Sea and the Contiguous Zone, Art. 8; LOS Convention, Art. 11. The United States Supreme Court has stated that "harbor works" connote "structures" and "installations" that are "part of the land," that in some sense enclose and shelter the waters within, and that are "connected with the coast." Therefore, the Court held that "dredged channels leading to ports and harbors" are not "harbor works." United States v. Louisiana, 394 U.S. 11, 36–38, 89 S.Ct. 773, 787–789, 22 L.Ed.2d 44 (1969). See also United States v. California, 432 U.S. 40, 97 S.Ct. 2915, 53 L.Ed.2d 94 (1977), *modified*, 449 U.S. 408, 101 S.Ct. 912, 66 L.Ed.2d 619 (1981) (treating certain artificial extensions as part of the coastline for baseline purposes). Compare another proceeding in the same case, 447 U.S. 1, 100 S.Ct. 1994, 64 L.Ed.2d 681 (1980) (refusing such treatment to a different type of extension).

"Roadsteads" are places at a distance from the coast that are used for the loading, unloading, and anchoring of ships. Even when they are situated wholly or partly outside the outer limit of the territorial sea, they are considered part of the territorial sea for purposes of the law of the sea. 1958 Convention on the Territorial Sea and the Contiguous Zone, Art. 9; LOS Convention, Art. 12. As they are considered part of the territorial sea and not of the internal waters, their delimitation does not influence the baseline from which the areas of coastal jurisdiction are measured. See McDougal and Burke, The Public Order of the Oceans 423–27 (1962).

"Offshore terminals" or "deepwater ports" are "any fixed or floating man-made structures other than a vessel, or any group of such structures, located beyond the territorial sea . . . and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State." Deepwater Port Act of 1974, as amended, 33 U.S.C. §§ 1501, 1502(10). See Get Oil Out! Inc. v. Exxon Corp., 586 F.2d 726 (9th Cir. 1978). For United States agreements with other countries as to the use of deepwater ports by foreign ships, see [1978] Digest of U.S. Practice in Int'l L. 826–27; [1979] *id.* 1082–83.

A coastal state may establish reasonable safety zones around an offshore terminal, in which it may take reasonable measures to ensure the safety both of navigation and of the installations themselves. In determining the breadth of the safety zone, the coastal state must take into account applicable international

Comment:

a. Coastal state sovereignty over territorial sea. The rights of a coastal state in its territorial sea have gradually increased during the past centuries. Today, international law treats the territorial sea like land territory, subject only to the right of passage for foreign vessels. The rights and duties of a state (§ 206) and its jurisdiction (Part IV) are the same in the territorial sea as in its land territory. Any exploration or exploitation of the area's resources, whether living or nonliving, whether natural or man-made (*e.g.*, sunken treasure), whether in the waters, sea-bed, or subsoil, is subject to the consent of the coastal state. No foreign aircraft may fly over the territorial sea without the permission of the coastal state, granted either *ad hoc* or by a general or bilateral international agreement. See § 513, Comment *i*. Aviation agreements regulating overflight of land territory generally apply also to the territorial sea. See § 513, Reporters' Note 6.

The authority of the coastal state in the territorial sea is subject, however, to the right of innocent passage, to the right of transit passage through and over certain straits, and to the right of archipelagic sea lanes passage. See § 513.

b. United States territorial sea and rights of States. The federal Government, rather than the States, has "paramount rights in and power over" the territorial sea, "an incident to which is full dominion over the resources of the soil under that water area, including oil." United States v. California, 332 U.S. 19, 38–39, 67 S.Ct. 1658, 1668, 91 L.Ed. 1889 (1947). In 1953, in the Submerged Lands Act, Congress relinquished to the coastal States the title to and ownership of submerged lands within a three-mile belt, and up to nine miles for some States. 43 U.S.C. § 1301–15. Congress also "approved and confirmed" the "seaward boundary" of each coastal State at three miles from its coastal line, subject to the right of some States to claim a larger historic title. 43 U.S.C. § 1312.

c. Internal waters and ports. In general, maritime ports are open to foreign ships on condition of reciprocity, see Reporters' Note 3, but the coastal state may temporarily suspend access in exceptional cases for imperative reasons, such as the security of the state or public health. It may condition entry of a foreign ship into its internal waters or ports on compliance with its laws and regulations. The coastal state may also exercise jurisdiction to enforce international standards with respect to some activities that occurred prior to entry into its ports or internal waters (for example, illegal discharge of pollutants). LOS Convention, Article 218, see, *e.g.*, Lauritzen v. Larsen, 345 U.S. 571, 577, 73 S.Ct. 921, 925, 97 L.Ed. 1254 (1953). In principle, the coastal state may exercise jurisdiction

with respect to a ship in port and over activities on board such ship, but in practice coastal states usually have little interest in exercising jurisdiction over such activities, except when the peace of the port is disturbed. See Reporters' Note 5. With respect to warships, see § 513, Comment *h*.

REPORTERS' NOTES

1. *Coastal state sovereignty over territorial sea.* Early in the 20th century, the status of the territorial sea was still debated, some seeing it as part of the high seas with only a few specific rights conceded to the coastal states. The sovereignty of the coastal state in the territorial sea was later accepted as customary international law and confirmed in the 1958 Convention on the Territorial Sea and the Contiguous Zone, Arts. 1 and 2. See also LOS Convention, Art. 2.

2. *United States territorial sea and rights of States.* In 1947, the Supreme Court held that the three-mile belt of the territorial sea was "in the domain of the Nation" and that, in consequence, the United States was "possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things" underlying the sea to the extent of three nautical miles measured from the low-water mark on the coast or from the outer limit of inland waters; and that the coastal States had "no title thereto or property interest therein." United States v. California, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 (1947); see also United States v. Louisiana, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216 (1950); United States v. Texas, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221. The Submerged Lands Act of 1953 ceded to the coastal States all the property rights of the United States in submerged lands within the three-mile belt (and up to nine miles in the Gulf of Mexico to States able to establish a historic title to such broader area). The Act vested in the States "the right and power to manage, administer, lease, develop and use" the submerged land and natural resources of the ceded area, "all in accordance with applicable State law." The United States retained, however, "powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs." 43 U.S.C. § 1301–15. For disputes between the United States and several coastal States with respect to the boundary between the inland waters and the territorial sea, see § 511, Reporters' Note 3.

The States have long applied their laws to activities in the territorial sea, and State courts have adjudicated disputes arising from activities there. The decision in United States v. California did not purport to modify the State's authority in those respects; the Submerged Lands Act in fact affirmed and approved the area as being within "the seaward boundary of each original coastal State." But an assertion of a wider territorial sea by the United States (as would be permissible under § 511(a) and Article 3 of the LOS Convention; but see § 511, Comment *d*) would not itself give rights in the additional zone to

the adjacent States. Unless Congress determined otherwise, the zone between three and twelve miles would be under the exclusive authority of the Federal Government.

3. *Access to ports.* It has been said that, as no civilized state has "the right to isolate itself wholly from the outside world," there is "a corresponding obligation imposed upon each maritime power not to deprive foreign vessels of commerce of access to all of its ports." 1 Hyde, International Law Chiefly as Interpreted and Applied by the United States 581 (2d ed. 1945). The LOS Convention does not mention a right of access of ships to foreign ports, but the customary law on the subject, as reflect in a number of international agreements, has been confirmed by at least one international decision. Thus, the Statute on the International Regime of Maritime Ports of 1923, confirmed the freedom of access to maritime ports by foreign vessels on condition of reciprocity; but it allows the coastal state "in exceptional cases, and for as short a period as possible," to deviate from this provision by measures which that state "is obliged to take in case of an emergency affecting the safety of the state or the vital interest of the country." 58 L.N.T.S. 285, 301, 305; 2 Hudson, International Legislation 1162 (1931). Although this Statute has been ratified by less than 30 states and the United States is not a party to it, the Statute has been accepted as reflecting a customary rule of international law. An arbitral tribunal, relying on this Statute, stated that "[a]ccording to a great principle of international law, ports of every State must be open to foreign merchant vessels and can only be closed when the vital interests of a State so require." Saudi Arabia v. Arabian American Oil Company (ARAMCO), Award of August 23, 1958, 27 Int'l L.Rep. 117, 212 (1963).

The Institute of International Law has considered this issue in 1898, 1928, and 1957, and each time, after a heated discussion, it affirmed the right of access to ports, subject to various conditions. In 1898, the Institute agreed that, as a general rule, access to ports "is presumed to be free to foreign ships," except when a state, "for reasons of which it is sole judge," declares its ports, or some of them, closed "when the safety of the State or the interest of the public health justifies the order," or when it refuses entrance to ships of a particular nation "as an act of just reprisal." Resolutions of the Institute of International Law 144 (J. Scott ed. 1916). In 1928, the Institute stated that, as a general rule, access to ports "is open to foreign vessels," but, as an exception and for a term as limited as possible, "a state may suspend this access by particular or general measures which it is obliged to take in case of serious events touching the safety of the state or the public health"; it also confirmed the exception in case of reprisals. Institut de Droit International, Tableau Général des Résolutions, 1873–1956, at 102 (Wehberg ed. 1957); 22 Am.J.Int'l L. 844, 847 (1928). In 1957, the Institute distinguished between internal waters and ports, and pointed out that a coastal state may deny access to internal waters, "[s]ubject to the rights of passage sanctioned either by usage or by treaty," but should abstain from denying such access to foreign commercial vessels "save where in ex-

ceptional cases this denial of access is imposed by imperative reasons." On the other hand, the Institute declared that "it is consistent with general practice of States to permit free access to ports and harbors by such vessels." [1957] 2 Annuaire de l'Institut de Droit International 485–86. For discussion, see *id.* 171, 180, 194–98, 202–09, 212–22, 253–67; for the text of the 1957 resolution, see also 52 Am.J.Int'l L. 103 (1958).

It seems, therefore, that it is now generally accepted that "in time of peace, commercial ports must be left open to international traffic," and that the "liberty of access to ports granted to foreign vessels implies their right to load and unload their cargoes; embark and disembark their passengers." Colombos, The International Law of the Sea 176 (6th ed. 1967). But see Khedivial Line, S.A.E. v. Seafarers' International Union, 278 F.2d 49, 52 (2d Cir.1960) (plaintiff presented no precedents showing that "the law of nations accords an unrestricted right of access to harbors by vessels of all nations"); Lowe, "The Right of Entry into Maritime Ports in International Law," 14 San Diego L.Rev. 597, 622 (1977) ("the ports of a State which are designated for international trade are, in the absence of express provisions to the contrary made by a port State, presumed to be open to the merchant ships of all States," and they "should not be closed to foreign merchant ships except when the peace, good order, or security of the coastal State necessitates closure").

The general principle of open ports is confirmed by many bilateral agreements. For instance, the Treaty of Friendship, Establishment and Navigation between the United States and Belgium, Brussels, 1961, provides that "[v]essels of either Contracting Party shall have liberty, on equal terms with vessels of the other Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels and cargoes shall in the ports, places and waters of such other Party be accorded in all respects national treatment and most-favored-nation treatment." Art. 13, 14 U.S.T. 1284, T.I.A.S. No. 5432, 480 U.N. T.S. 149. See also [1957] 2 Annuaire de l'Institut de Droit International 209, 216 (according to Paul de La Pradelle, "the many conventions on commerce and navigation which provide for [access to ports] have established a rule of customary law," but others contended that all these treaty provisions would have been superfluous if this right of access were based on customary law).

The parties to the Convention on the Facilitation of International Maritime Traffic, London, April 9, 1965, agreed to adopt "all appropriate measures to facilitate and expedite international maritime traffic and to prevent unnecessary delays to ships [in port] and to persons and property on board." Art. 1, and Annex, para. 2.12, 18 U.S.T. 411, T.I.A.S. No. 6251, 591 U.N.T.S. 265. See also § 501, Reporters' Note 3.

States may impose, however, special restrictions on certain categories of ships. For instance, the Convention on the Liability of Operators of Nuclear-Powered Ships, Brussels, 1962, provides that nothing in that Convention "shall affect any right which a Contracting State may have under in-

ternational law to deny access to its waters and harbours to nuclear ships licensed by another Contracting State, even when it has formally complied with all the provisions" of that Convention. Art. XVII, 57 Am.J.Int'l L. 268 (1963). See also Reporters' Note 1. In 1985, New Zealand denied to United States nuclear ships access to its ports. See 21 Weekly Comp.Pres. Docs. 147 (1985). A directive of the Council of the European Economic Community regulates the entry into Community ports of oil, gas, and chemical tankers, Dec. 21, 1978, 22 O.J. Eur.Comm. (No. L. 33) 33 (1979); amended Dec. 11, 1979, *id.* (No. L. 315) 16 (1979). Access to ports by other categories of vessels (*e.g.*, fishing vessels) may also be subject to various restrictions.

A coastal state can condition the entry of foreign ships into its ports on compliance with specified laws and regulations. This jurisdiction to prescribe may extend even to some matters relating to the internal affairs of the ship. See Patterson v. Bark Eudora, 190 U.S. 169, 178, 23 S.Ct. 821, 824, 47 L.Ed. 1002 (1903) (prohibiting prepayment of seamen's wages by certain foreign vessels). See § 513, Comment *c*. More recently, coastal state jurisdiction has been expanded to allow the state to take steps in the territorial sea necessary to prevent any breach of the conditions imposed by the state on ships proceeding to its internal waters or to a port facility outside these waters. See 1958 Convention on the Territorial Sea and the Contiguous Zone, Art. 16(2); LOS Convention, Art. 25.

The principles governing international aviation differ from those governing shipping; landing rights as well as overflight rights have to be specifically conferred. See § 513, Comment *i*.

4. *Access to United States coastal waters and ports.* The marine pollution provisions of the Clean Water Act of 1977 were enacted in part as a result of navigation accidents, such as that of the tanker Argo Merchant, which caused considerable damage to the marine environment. The Act prohibited discharge of oil or hazardous substances into or upon the waters of the contiguous zone established by the United States pursuant to Article 24 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, or in other waters where activities "may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)" (16 U.S.C. §§ 1801 *et seq.*), *i.e.*, within 200 nautical miles from the baseline of the territorial sea. 33 U.S.C. § 1321(a)(9) and (b)(1) and (3). Enforcement authority under this Act was limited, however, to the waters of the 12-mile contiguous zone. *Id.* § 1321(m).

Jurisdiction within the 200-mile zone was reasserted by the Port and Tanker Safety Act of 1978, 33 U.S.C. § 1221, which defined the marine environment subject to the Act as including not only the navigable waters of the United States but also "the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority," as well as "the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof

ship voluntarily enters a port, it becomes subject to the jurisdiction of the coastal state. Cunard S.S. Co. v. Mellon, 262 U.S. 100, 124, 43 S.Ct. 504, 507, 67 L.Ed. 894 (1923); Benz v. Compania Naviera Hidalgo, S.A., 353 U.S. 138, 142, 77 S.Ct. 699, 1 L.Ed.2d 709 (1957). See § 502, Comment *d*.

The coastal state "may out of considerations of public policy choose to forego the exertion of its jurisdiction or to exert the same in only a limited way, but this is a matter resting solely within its discretion." Cunard S.S. Co. v. Mellon, *supra*, at 124, 43 S.Ct. at 507. As was pointed out in Wildenhus's Case, from experience it was found long ago that "it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew toward the vessel or among themselves." Therefore, it became generally understood that "all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged." 120 U.S. 1, 12, 7 S.Ct. 385, 387, 30 L.Ed. 565 (1887), reiterated in Lauritzen v. Larsen, 345 U.S. 571, 585–86, 73 S.Ct. 921, 930, 97 L.Ed. 1254 (1953). On the other hand, "if crimes are committed on board of a character to disturb the peace and tranquillity of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority." Wildenhus's Case, *supra*, at 12, 7 S.Ct. at 387 (United States law was applied to murder committed on board a foreign ship in a United States port).

Jurisdiction over foreign vessels in port is frequently limited by bilateral agreement. See, *e.g.*, United States-United Kingdom Consular Convention, 1951, Art. 22, 3 U.S.T. 3426, T.I.A.S. No. 2494, 165 U.N. T.S. 121.

The authority of the coastal state generally applies to ships "voluntarily in port," not to ships driven to take refuge in a port by *force majeure* or other necessity. See Kate A. Hoff Claim (United States v. Mexico, 1929), 4 R.Int'l Arb. Awards 444 (1951); but see Cushin and Lewis v. The King, [1935] Can. Exch. 103, [1933–34] Ann. Dig. 207 ("putting into port under constraint does not carry any legal right to exemption from local law or local jurisdiction"). See also statement by Secretary Webster, August 1, 1842, 2 Moore, Digest of International Law 353, 354 (1906).

For a study of the treatment by different states of foreign merchant vessels in port, see reports by the UNCTAD Secretariat, U.N.Docs. TD/B/C.4/136 (1975) and TD/B/C.4/158 (1977).

6. *Warships and other government ships operated for noncommercial purposes.* A warship (§ 501, Reporters' Note 1) in a foreign port must comply with the laws and regulations of the coastal state relating to navigation and safety. See LOS Convention, Art. 21(1) and (4); see also Harvard Research in International Law, The Law of Territorial Waters, 23 Am.J.

Int'l L. Spec. Supp. 328 (1929). For an example of such legislation, see the Spanish order of March 23, 1958, Art. 6, U.N. Legislative Series, National Legislation and Treaties Relating to the Law of the Sea 145, 148 (U.N. Pub. ST/LEG/SER.B/19) (1980). If any such ship does not comply with port regulations, the flag state is internationally responsible for any damage caused, and the ship may be required to leave the port. See LOS Convention, Arts. 30–31.

The coastal state has no jurisdiction over offenses committed on board foreign warships or other government ships operated for noncommercial purposes. See Bustamante Code of Private International Law, Havana, 1928, Art. 300, 86 L.N.T.S. 111, 4 Hudson, International Legislation 2279, 2323 (1931). (The United States is not a party to this instrument.) Under international law, government-owned vessels not used for commercial purposes enjoy immunity from arrest, attachment, or execution. See § 457, Reporters' Note 7. But there is no immunity for a foreign public vessel from a maritime lien based upon a commercial activity of the foreign state. See § 455(4) and Reporters' Note 3 thereto.

7. *Additional jurisdiction to adjudicate by port state.* Traditionally, except for cases within general admiralty jurisdiction, a port state's jurisdiction to adjudicate claims against foreign ships was ordinarily limited to activities by or on board a ship navigating or at anchor in a port. In the 1970s, several international agreements relating to marine pollution broadened the jurisdiction of the port state to allow that state to deal with violations of international environmental regulations that occurred on the high seas or in the waters of another state. This allows a state to inspect any ship stopping at one of its ports to determine whether it has committed an environmental violation anywhere in the world, and to report the results of the inspection to the flag state. Thus, port jurisdiction has been enlarged from a limited jurisdiction to a general jurisdiction for all port states. See §§ 603–604; see also M'Gonigle and Zacher, Pollution, Politics and International Law 231–34, 249–51 (1979).

Maritime states objected to a coastal state's stopping a ship passing through coastal waters, because the cost of stopping a large tanker was considered very high, but they were willing to accept investigative and judicial proceedings conducted while the ship was loading or unloading in a port. It was also agreed that the ship itself must be permitted to proceed upon posting a bond or other appropriate security, and that only monetary penalties may be imposed, except in the case of a willful and serious act of pollution in the territorial sea. The compromise has been codified in Arts. 218, 228, and 230 of the LOS Convention. See also § 514, Comment *i*.

A European agreement of 1982 established common standards for port state control. See § 603, Reporters' Note 2. The UNCTAD Secretariat concluded that there did not appear to be any evidence that such control was being used to discriminate against ships of any particular flag state. UNCTAD Secretariat, International Maritime Legislation: Treatment of Merchant Vessels in Ports at Regional Level, U.N. Doc. TD/B/C.4/275, at 11 (1984).